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**UNITED STATES DISTRICT COURT  
CENTRAL DISTRICT OF CALIFORNIA**

BOARD OF TRUSTEES OF THE	)	CASE NO.
INLAND EMPIRE IBEW-NECA	)	
DEFINED CONTRIBUTION TRUST	)	
FUND; BOARD OF TRUSTEES OF	)	
THE RIVERSIDE COUNTY	)	COMPLAINT:
EDUCATIONAL AND TRAINING	)	1. BREACH OF WRITTEN
TRUST FUND; BOARD OF TRUSTEES	)	COLLECTIVE BARGAINING
OF THE INLAND EMPIRE IBEW-	)	AGREEMENT AND RELATED
NECA LABOR-MANAGEMENT	)	TRUST AGREEMENTS
COOPERATION COMMITTEE	)	2. VIOLATION OF SECTION 515
TRUST FUND; BOARD OF TRUSTEES	)	OF ERISA
OF NECA/IBEW FAMILY MEDICAL	)	3. BREACH OF SETTLEMENT
CARE TRUST FUND; BOARD OF	)	AGREEMENT
TRUSTEES OF THE NATIONAL	)	
ELECTRICAL BENEFIT FUND; THE	)	
SOUTHERN SIERRAS CHAPTER OF	)	
NECA ON BEHALF OF THE	)	
ADMINISTRATIVE MAINTENANCE	)	
FUND, and LOCAL UNION NO. 440	)	
OF THE INTERNATIONAL	)	
BROTHERHOOD OF ELECTRICAL	)	
WORKERS,	)	

Plaintiffs,

v.

1 ACS ENGINEERING, INC., a California )  
2 corporation, and BABAK KAVOOSI, )  
3 an individual, )  
4 Defendants. )

5 Plaintiffs complain and allege as follows:

6 **JURISDICTION AND VENUE**

7 1. This Court has jurisdiction over this case under section 502(e) of the  
8 Employee Retirement Income Security Act of 1974 (“ERISA”), 29 U.S.C. § 1132(e),  
9 which grants the district courts of the United States, as amended, the exclusive  
10 jurisdiction over civil actions brought by a fiduciary pursuant to section 502(a)(3) of  
11 ERISA, 29 U.S.C. § 1132(a)(3), to redress violations or enforce the terms of ERISA or  
12 an employee benefit plan governed by ERISA. Such jurisdiction exists without respect  
13 to the amount in controversy or the citizenship of the parties, as provided in section 502(f)  
14 of ERISA, 29 U.S.C. § 1132(f).

15 2. This Court also has jurisdiction over this case pursuant to section 301(a) of  
16 the Labor Management Relations Act of 1947 (“LMRA”), 29 U.S.C. § 185(a), which  
17 grants the district courts of the United States original jurisdiction over suits for violation  
18 of contracts between an employer and a labor organization representing employees in an  
19 industry affecting commerce, without respect to the amount in controversy and the  
20 citizenship of the parties.

21 3. Venue is proper in this Court pursuant to section 502(e)(2) of ERISA, 29  
22 U.S.C. § 1132(e)(2), and section 301(a) of the LMRA, 29 U.S.C. § 185(a), as it is the  
23 district in which the subject employee benefit plans are administered, it is the district in  
24 which the relevant acts took place, and it is the district in which monies are due and  
25 payable.

26 4. To the extent this Complaint sets forth any state law claims, this Court has  
27 supplemental jurisdiction over those claims pursuant 28 U.S.C. § 1367(a) because the  
28 state claims arise from the same case or controversy wherein the district court has original

1 jurisdiction over the civil action pursuant to 28 U.S.C § 1331. Specifically, this action  
2 arises out of Plaintiffs’ allegations that Defendants failed to pay fringe benefits  
3 contributions to the respective Trust Funds, in violation of the governing Collective  
4 Bargaining Agreement, the Trust Agreements, and Settlement Agreement.

5 5. Additionally, the action does not raise novel or complex issues of State law,  
6 the state claims presented do not substantially predominate over the issues of Federal  
7 law, and there are no exceptional circumstances present in the case at hand to compel  
8 reasons for this Court to decline supplemental jurisdiction.

9 **PARTIES**

10 6. Plaintiffs are the Trustees of the Inland Empire IBEW-NECA Defined  
11 Contribution Trust Fund (“DC Fund”), the Riverside County Electrical Educational and  
12 Training Trust Fund (“Riverside Training Fund”), the Trustees of the Inland Empire  
13 IBEW-NECA Labor-Management Cooperation Committee Trust Fund (“LMCC”),  
14 NECA/IBEW Family Medical Care Trust Fund (“FMCP”), the National Electrical  
15 Benefit Fund (“NEBF”), and Southern Sierras Chapter of NECA on behalf of the  
16 Administrative Maintenance Fund (“Admin. Fund”; collectively “Trust Funds”).

17 7. Plaintiffs also include the Local Union No. 440 International Brotherhood  
18 of Electrical Workers (“Local 440”).

19 8. The Trust Funds and Local 440 are each duly organized and operating in the  
20 State of California.

21 9. The Trust Funds are multiemployer trust funds created and maintained  
22 pursuant to section 302(c) of the LMRA, 29 U.S.C. § 186(c).

23 10. The Trust Funds, except the LMCC Fund and the Admin. Fund, are  
24 multiemployer plans within the meaning of sections 3(37) and 515 of ERISA, 29 U.S.C.  
25 §§ 1002(37)(A) and 1145, and the Plaintiff trustees of these Trust Funds are  
26 “fiduciar[ies]” as defined in section 3(21)(A) of ERISA, 29 U.S.C. § 1002(21)(A).

27 11. The Plaintiffs bring this action on behalf of themselves and on behalf of  
28 participants and beneficiaries of the Plaintiff Trust Funds to recover benefits due,

1 pursuant to section 502 of ERISA, 29 U.S.C. § 1132, and as third-party beneficiaries of  
2 the Collective Bargaining Agreement pursuant to 29 U.S.C. § 185.

3 12. Plaintiffs are informed and believe, and also allege thereon, that Defendant  
4 ACS Engineering, Inc. (“ACS”) is and at all times relevant herein was, a corporation  
5 organized and existing under laws of the State of California with its principal place of  
6 business in Irvine, California.

7 13. ACS is in the business of electrical engineering automation and design. As  
8 such, ACS is an “employer” in an industry affecting commerce, as defined and used in  
9 sections 3(5), 3(11), and 3(12) of ERISA, 29 U.S.C. §§ 1002(5), (11), and (12), and  
10 section 2(2) of the LMRA, 29 U.S.C. § 152(5).

11 14. ACS is a signatory employer to a Collective Bargaining Agreement  
12 (“CBA”), which provides for payment of contributions to the Trust Funds. The CBA  
13 binds ACS to the provisions of the CBA and the respective Trust Agreements for the  
14 Trust Funds.

15 15. Plaintiffs are informed and believe, and allege thereon, that Defendant Babak  
16 Kavoss (collectively with ACS, “Defendants”), is a resident of Orange County,  
17 California and is, and was at all times relevant herein, the President and Chief Executive  
18 Officer of ACS.

19 16. Mr. Kavoss, as an individual, signed and entered into a contractual  
20 agreement with Plaintiffs as alleged below.

21 **FACTUAL ALLEGATIONS**

22 17. ACS executed and delivered a written agreement to Local 440, whereby  
23 ACS agreed to be bound by the terms and conditions of an existing Collective Bargaining  
24 Agreement in effect between Local 440 and the Southern Chapter of the National  
25 Electrical Contractors’ Association, entitled the Inside Wireman’s Agreement (“Local  
26 440 Wireman’s Agreement”). Attached hereto as Exhibit 1 and incorporated herein by  
27 reference is the executed copy of the written agreement with Local 440 binding  
28 Defendant ACS to the Local 440 Wireman’s Agreement.

1 18. Plaintiffs are informed and believe, and allege thereon, that at all times  
2 relevant herein, Defendant ACS was bound by the terms and conditions of the Local 440  
3 Wireman's Agreements.

4 19. At all times relevant herein, Defendant ACS employed employees covered  
5 by the Local 440 Wireman's Agreement.

6 20. Pursuant to the terms of the Local 440 Wireman's Agreements, ACS is  
7 "obligated to make contributions to a multiemployer plan" within the meaning of section  
8 515 of ERISA, 29 U.S.C. § 1145.

9 21. Defendant ACS failed to timely submit its contributions to the Trust Funds  
10 for electrical services performed under the Local 440 Wireman's Agreement.

11 22. The Trust Funds therefore determined that ACS was liable to the Trust  
12 Funds, for delinquent benefit contributions, accrued interest, and liquidated damages.  
13 Specifically, ACS is liable to the DC Fund, the Riverside Training Fund, the LMCC, the  
14 Admin. Fund, and Local 440 (collectively, "Inland Empire Trust Funds") for the work  
15 months of June 2021 through March 2022 for a sum of \$38,966.16. ACS is liable to  
16 FMCP and the NEBF (collectively, the "National Funds"), for the work months of April  
17 through December 2021 and February through March 2022, for a sum of \$62,224.44.

18 23. On February 3, 2022, the Inland Empire Trust Funds and Defendants,  
19 entered into a Settlement Agreement to resolve the matter and forestall legal proceedings  
20 to collect the amounts owed to them only. Attached hereto as Exhibit 2 and incorporated  
21 herein by reference is the executed copy of the written agreement, signed by Mr.  
22 Kavoss, as an individual and on behalf ACS.

23 24. Pursuant to the terms of the Settlement Agreement, the Defendants jointly  
24 and severally agreed to pay the Inland Empire Trust Funds a sum of \$42,652.83  
25 ("Principal"), plus amortized interest at the rate of 8% per annum, by making monthly  
26 payments of at least \$3,710.30 on or before the 1<sup>st</sup> of each month until the Principal plus  
27 the accrued interest is paid in full, beginning with the month of February 1, 2022.  
28

1           25. Defendants further agreed that they would timely submit to the Inland  
2 Empire Trust Funds, its monthly reports for the month of November 2021 forward, and  
3 timely pay its fringe benefit contributions and related amounts accruing, including  
4 liquidated damages and interest.

5           26. Finally, Defendants agreed to pay the Inland Empire Trust Funds any  
6 amount found to be due pursuant an audit conducted by or completed after the date of  
7 the Settlement Agreement.

8           27. Defendants timely made their first payment to the Inland Empire Trust  
9 Funds in the amount of \$3,710.30, in accordance with the terms of the Settlement  
10 Agreement. Thereafter, Defendants failed to make any additional payments.

11           28. Since March 1, 2022, Defendants have not made any monthly payments to  
12 the Inland Empire Trust Funds.

13           29. Additionally, Defendants have also failed to submit to the Inland Empire  
14 Trust Funds, their contributions for the months of February and March 2022, in violation  
15 of the Trust Agreements, the Local 440 Wireman's Agreement, and the Settlement  
16 Agreement.

17           30. In accordance with the terms of the Settlement Agreement, on March 10,  
18 2022, by and through their counsel, the Inland Empire Trust Funds provided Defendants  
19 with a written Notice of Default and Demand to Cure.

20           31. Defendants had seven (7) days from the date of the letter to cure the default.  
21 However, to date, Defendants failed to cure their default with the Inland Empire Trust  
22 Funds.

23           32. To date, Plaintiffs are informed and believe, and thereon allege, that  
24 Defendants are in default and breach of its obligations to the Inland Empire Trust Funds  
25 under the Settlement Agreement, the Local 440 Wireman's Agreement, and the Trust  
26 Agreements.

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28           //

1 33. Additionally, Plaintiffs are informed and believe, and thereon allege, that  
2 Defendants are in default and breach of its obligations to the National Funds under the  
3 Local 440 Wireman's Agreement, and the Trust Agreements.

4 34. Under the terms of the Trust Agreements and the Employee Retirement  
5 Income Security Act, an employer who fails to make timely contributions to the Trust  
6 Funds for employee fringe benefits is liable to the Trust Funds for all unpaid  
7 contributions, plus, interest, and attorney's fees and collection costs. See also, 29 U.S.C.  
8 § 1132(g).

9 35. Pursuant to 29 U.S.C. § 1132(g)(2), Plaintiffs are further entitled to an amount  
10 equal to the greater of: (a) double interest; or (b) liquidated damages.

11  
12 **FIRST CLAIM FOR RELIEF**  
13 **BREACH OF WRITTEN COLLECTIVE BARGAINING**  
14 **AGREEMENT AND RELATED TRUST AGREEMENTS**  
15 **PLAINTIFFS AGAINST DEFENDANT ACS**  
16 **(29 U.S.C. § 185)**

17 36. Plaintiffs hereby incorporate by reference each of the foregoing  
18 paragraphs above to the same effect as if set forth verbatim here.

19 37. Plaintiffs are informed and believe, and thereon allege, that by the terms  
20 of and provisions of the Local 440 Wireman's Agreement and/or related Trust  
21 Agreements, and at all times material herein, Defendant ACS agreed, and was obligated  
22 to:

23 37.1 Prepare and submit true, complete and accurate written monthly  
24 contribution reports to the Trust Funds and Local 440 on a timely basis showing: (i) the  
25 identities of employees performing work covered by the Local 440 Wireman's  
26 Agreement and/or the related Trust Agreements, (ii) the number of hours worked by these  
27 employees, (iii) the rates of pay, (iv) character of hours worked (e.g., straight time, over-  
28 time, etc.), and (v) based upon the hours worked or amounts paid to employees, the



1 proper calculation of the fringe benefit contributions, union dues and/or withholdings  
2 attributable to the same employees

3 37.2 Pay to the Trust Funds and Local 440 fringe benefit contributions,  
4 union dues and/or withholdings on a monthly basis, and at specified rates for each hour  
5 worked by applicable employees. These amounts are considered delinquent if not  
6 received by the Trust Funds and Local 440 by a date certain of the month succeeding the  
7 month in which work was performed.

8 37.3 Permit the Trust Funds and Local 440 and their agents to conduct  
9 audits of payroll and related records in order to determine if fringe benefit contributions  
10 and other amounts have been properly paid to the Trust Funds and Local 440 pursuant to  
11 the Local 440 Wireman's Agreement and/or related Trust Agreements.

12 38. Defendant ACS has breached the Local 440 Wireman's Agreement and/or  
13 the related Trust Agreements by failing to pay the Trust Funds and Local 440 fringe  
14 benefit contributions, union dues and/or other amounts required by the Local 440  
15 Wireman's Agreement and/or related Trust Agreements. Defendant ACS currently owes  
16 the Trust Funds and Local 440 for fringe benefit contributions/union dues, in an amount  
17 of at least \$86,957.37 for the months of April 2021 through March 2022.

18 39. Plaintiffs are informed and believe, and allege thereon, that on an ongoing  
19 basis, that Defendant ACS will and has continued to fail to pay to the Trust Funds and  
20 Local 440 the required fringe benefits contributions, union dues and other amounts owed.  
21 The amount of the additional unpaid contributions, union dues and other amounts owed  
22 will be established by proof at the trial herein.

23 40. Plaintiffs are informed and believe, and allege thereon, that there is no  
24 pending unsatisfied condition subsequent or legal excuse for Defendant ACS's failure to  
25 comply with the terms of the Local 440 Wireman's Agreement and/or related Trust  
26 Agreements.

27 //

28 //



1           41. As of the date of the filing of this Complaint, Defendant ACS is  
2 “delinquent,” as that term is used in the Local 440 Wireman’s Agreement and/or related  
3 Trust Agreements.

4           42. Pursuant to the Local 440 Wireman’s Agreement, related Trust Agreements,  
5 and/or section 502(g)(2) of ERISA, 29 U.S.C. § 1132(g)(2), ACS is obligated to pay to  
6 the Trust Funds liquidated damages for the detriment caused by ACS’s failure to pay  
7 fringe benefit contributions owed to the Trust Funds in a timely manner. Plaintiffs are  
8 informed and believe, and allege thereon, that there is due and payable to from ACS to  
9 the Trust Funds liquidated damages related to work performed in an amount of at least  
10 \$12,902.08.

11           43. Pursuant to the Local 440 Wireman’s Agreement, related Trust Agreements,  
12 and/or section 502(g)(2) of ERISA, 29 U.S.C. § 1132(g)(2), Defendant ACS owes the  
13 Trust Funds interest on all unpaid fringe benefit contributions from the dates the sums  
14 were originally due to the Trust Funds to the date of judgment and post-judgment. The  
15 amount of interest of at least \$7,041.50.

16           44. Pursuant to the Local 440 Wireman’s Agreement, related Trust  
17 Agreements, and/or section 502(g)(2) of ERISA, 29 U.S.C. § 1132(g)(2), ACS is  
18 obligated to pay all legal and auditing costs in connection with any delinquency, whether  
19 incurred before or after litigation is or was commenced.

20           45. It has been necessary for the Plaintiffs to engage legal counsel and incur  
21 costs for the purpose of collecting said contributions and other amounts, and the Plaintiffs  
22 are entitled to their reasonable attorney’s fees in connection therewith. The Plaintiffs may  
23 also incur audit costs in connection with Defendant ACS’s delinquency. The exact  
24 amount of the legal fees and costs due and payable, and any audit costs that may be  
25 incurred, have not been ascertained at this time. These amounts shall be established by  
26 proof at the trial herein.

27           //

28           //

1           46. Pursuant to section 502(g)(2) of ERISA, 29 U.S.C. § 1132(g)(2), the Court  
2 may grant such other legal or equitable relief as the Court deems appropriate. As part of  
3 the Plaintiffs' judgment, the Plaintiffs request the Court to:

4           46.1 Order Defendant ACS, its representatives, agents and associates, to  
5 provide a full and complete accounting for, and tracing the use of, all unpaid amounts  
6 owed pursuant to the Local 440 Wireman's Agreement and Trust Agreements, and  
7 identify all property, real or personal, tangible or intangible, that are the profits from the  
8 unpaid amounts, whether in whole or in part, of the use of any sums owed to the Trust  
9 Fund and Local 440.

10           46.2 Order Defendant ACS, its representatives, agents and associates, to  
11 post and deliver either a good faith deposit, or a performance bond issued in favor of the  
12 Trust Funds and Local 440, in an amount to be determined by the Court to be appropriate.

13           46.3 Order the creation of a constructive trust for the full amount determined  
14 to be due to the Plaintiffs on all applicable property of Defendant ACS, and order the  
15 transfer of the applicable property to the Plaintiffs; and

16           46.4 Order Defendant ACS, its representatives, agents and associates, to  
17 pay to the Plaintiffs all amounts due to the Trust Funds and Local 440, including, but not  
18 limited to, the unpaid contributions, union dues, withholdings, damages, legal fees, audit  
19 fees, and other expenses and damages incurred.

20           47. Plaintiffs are also seeking injunctive relief, including but not limited to a  
21 Temporary Restraining Order, Preliminary Injunction and/or Permanent Injunction:

22           47.1 Ordering Defendant ACS to submit the required monthly contribution  
23 reports and remit the appropriate fringe benefit contributions, union dues and other  
24 amounts owed to the Trust Funds and Local 440 on an ongoing basis;

25           47.2 Enjoining Defendant ACS from continuing to violate its duties under  
26 ERISA (by failing to submit the required monthly contribution reports and remit the  
27 appropriate fringe benefit contributions owed to the Trust Funds on an ongoing basis);

28           47.3 Enjoining Defendant ACS from employing employees covered under

1 the Local 440 Wireman's Agreement and related Trust Agreements without properly  
2 reporting and remitting to the Trust Funds and Local 440 the amounts owed to the  
3 Plaintiffs pursuant to those agreements; and

4 47.4 Order Defendant ACS to permit the Plaintiffs' auditor access to the  
5 wage and payroll books and records of Defendant ACS in order to permit the Plaintiffs  
6 to verify the precise amounts owed by Defendant ACS to the Trust Funds and Local 440.

7  
8 **SECOND CLAIM FOR RELIEF**  
9 **VIOLATION OF SECTION 515 OF ERISA**  
10 **PLAINTIFFS AGAINST DEFENDANT ACS**  
11 **(29 U.S.C. §§ 1145 1132)**

12 48. Plaintiffs hereby incorporate by reference each of the foregoing paragraphs,  
13 inclusive of the sub-paragraphs, above to the same effect as if set forth verbatim here.

14 49. Section 515 of ERISA, 29 U.S.C. § 1145, provides "[e]very employer who  
15 is obligated to make contributions to a multiemployer plan under the terms of the plan or  
16 under the terms of a collectively bargaining agreement shall, to the extent not inconsistent  
17 with law, make such contributions in accordance with the terms and conditions of such  
18 plan or such agreement."

19 50. As stated above, Defendant ACS is an "employer" as defined and used in  
20 section 3(5) of ERISA, 29 U.S.C. § 1002(5), and is "obligated to make contributions to  
21 a multiemployer plan" within the meaning and use of section 515 of ERISA, 29 U.S.C.  
22 § 1145.

23 51. Plaintiffs are informed and believe, and allege thereon, that Defendant ACS  
24 violated its statutory mandated obligation to timely pay fringe benefit contributions to  
25 the Trust Funds. Plaintiffs are informed and believe, and allege thereon, that there is due  
26 and payable from Defendant ACS the fringe benefit contributions and other amounts set  
27 forth in paragraph 22 above.

28 52. Defendant ACS failed to timely cure its violation and has since continued  
to violate its statutory obligations.

1           53. Plaintiffs are informed and believe, and allege thereon, that there is no  
2 pending unsatisfied condition subsequent or legal excuse for ACS's violation of section  
3 515 of ERISA, 29 U.S.C. § 1145.

4           54. Pursuant to section 502(g)(2) of ERISA, 29 U.S.C. § 1132(g)(2), in any  
5 action by a fiduciary in which judgment is found in favor of Plaintiffs, the Court shall  
6 award the Plaintiffs: (i) the unpaid contributions, (ii) interest on the unpaid contributions,  
7 (iii) an amount equal to the greater of, (a) interest on the unpaid contributions or (b)  
8 liquidated damages provided for under the Plan in amount not in excess of 20% (or such  
9 higher percentages as may be permitted under federal or state law) of the amount  
10 determined by the Court to be unpaid contributions, (iv) reasonable attorney's fees and  
11 costs, and (v) such other legal or equitable relief as the Court deems appropriate. For  
12 purposes of section 502(g)(2) of ERISA, 29 U.S.C. § 1132(g)(2), interest on unpaid  
13 contributions shall be determined by using the rate provided under the Plan or, if none,  
14 the rate prescribed under section 6621 of the Internal Revenue Code of 1986, as amended  
15 26 U.S.C. § 6621. The exact amount of the unpaid contributions, interest, liquidated  
16 damages, reasonable attorney's fees, court costs, and other expenses allowed by federal  
17 statute and owed by the Defendant to the Trust Funds has not been ascertained at this  
18 time. These amounts shall be established by proof at the time of trial.

19           55. As part of the Plaintiffs' judgment, the Plaintiffs shall also request the relief  
20 set forth in paragraph 46-47, inclusive of sub-paragraphs, above.

21  
22                           **THIRD CLAIM FOR RELIEF**  
23                           **BREACH OF CONTRACT**  
24                           **THE INLAND EMPIRE TRUST FUNDS AGAINST DEFENDANTS**  
25                           **(Cal. Civ. Code § 1549)**

26           56. Plaintiffs hereby incorporate by reference each of the foregoing paragraphs,  
27 inclusive of the sub-paragraphs, above to the same effect as if set forth verbatim here.

28           //

          //

57. As stated above, on February 3, 2022, the Parties entered into a Settlement Agreement, whereby Defendants, jointly and severally, agreed to pay a total of \$42,652.83 by way of monthly payments beginning on February 1, 2022.

58. By entering into the Settlement Agreement, the Inland Empire Trust Funds agreed not to pursue any legal action against Defendants.

59. Beginning on March 1, 2022, Plaintiffs are informed and believe, and allege thereon, that Defendants have not made any monthly payments to the Inland Empire Trust Funds.

60. The Inland Empire Trust Funds provided Defendants with notice of their default, neither ACS or Mr. Kavossian cured their default.

61. The Plaintiffs are now enforcing their rights under the Settlement Agreement against both ACS and Mr. Kavoossi, to collect all amounts due.

62. Furthermore, pursuant to California Civil Code section 3300, for the breach of and obligation arising from contract, the measure of damages is the amount which will compensate the party aggrieved for all the detriment proximately caused thereby.

63. Pursuant to California Civil Code section 3302, the detriment caused by the breach of an obligation to pay money only, is deemed to be the amount due by the terms of the obligation, with interest thereon.

64. Therefore, Defendants owe to the Inland Empire Trust Funds the principal amount of \$42,652.83, plus amortized interest at the rate of 8% per annum, less all payments received by the Trust Funds, plus attorney's fees and costs.

## PRAYER

WHEREFORE, the Plaintiffs pray for judgment as follows:

1. For unpaid fringe benefit contributions, liquidated damages, and other amounts due as proved;
2. For damages for breach of contract in amounts as proved;
3. For interest at the applicable rate on all amounts due from their respective due dates and thereafter post-judgment;

- 1           4.     For reasonable attorney's fees;
- 2           5.     For costs of suit incurred herein;
- 3           6.     For additional relief as this Court deems just and proper, including, but not
- 4 limited to, the following:

5           6.1    An Order directing the Defendants, its representative, agents, and

6 associates, to provide a full and complete accounting for, and tracing the use of, all unpaid

7 amounts owed pursuant to the Settlement Agreement, the Local 440 Wireman's

8 Agreement, the Trust Agreements, and identify all property, real or personal, tangible or

9 intangible, that are the profits from the unpaid amounts, whether in whole or in part, of

10 the use of any sums owed to the Plaintiffs;

11           6.2    An Order directing the Defendants, its representatives, agents and

12 associates, to post and deliver either a good faith deposit, or a performance bond issued

13 in favor of the Trust Funds, in an amount determined by the Court to be appropriate;

14           6.3    An Order for the creation of a constructive trust for the full amount

15 determined to be due to the Plaintiffs on all applicable property of the Defendants, and

16 an Order for the transfer of the applicable property to the Plaintiffs; and

17           6.4    An Order directly the Defendants, its representatives, agents and

18 associates, to pay the Plaintiffs all amounts due the Plaintiffs, including, but not limited

19 to, the Principal Amount pursuant to the Settlement Agreement, the unpaid contributions,

20 union dues, legal fees, audit fees and other expenses and damages incurred.

21           6.5    Order Defendant ACS to permit the Plaintiffs' auditor access to the

22 wage and payroll books and records of the Defendant ACS in order to permit the

23 Plaintiffs to verify the precise amounts owed by the Defendants to the Trust Funds and

24 Local Unions. Said documents would include the following documents: payroll records,

25 certified payroll records, timecards, payroll registers, form 1099's and 1096's, form

26 W-2, W-3, DE-6 and 941 wage and tax statements, general ledger, accounts receivable

27 listings, cash disbursement journals, job cost records, invoices, subcontracts, cash

28 receipts journals, quarterly federal and state payroll tax returns, cancelled checks and

1 check stub registers, inspector logs, shift differential logs, work orders, payroll records  
2 for related companies, employer contribution reports and cancelled checks regarding  
3 contributions owed/paid to other trust funds, detailed worker's compensation insurance  
4 reports, and any other books and records that may be necessary to in order to determine  
5 the sums owed by the Defendants to the Plaintiffs.

6 7. For injunctive relief, including but not limited to a Temporary Restraining  
7 Order, Preliminary Injunction and/or Permanent Injunction:

8 7.1 Ordering the Defendant ACS to submit the required monthly  
9 contribution reports and remit the appropriate fringe benefit contributions, union dues  
10 and other amounts owed to the Trust Funds and Local 440 on an ongoing basis;

11 7.2 Enjoining the Defendants from continuing to violate its duties under  
12 ERISA (by failing to submit the required monthly contribution reports and remit the  
13 appropriate fringe benefit contributions owed to the Trust Funds on an ongoing basis);

14 7.3 Enjoining the Defendant from employing employees covered under  
15 the Local 440 Wireman's Agreement and related Trust Agreements without properly  
16 reporting and remitting to the Trust Funds and Local 440 the amounts owed to the  
17 Plaintiffs pursuant to those agreements; and

18 7.4 Order to Defendant ACS to permit the Plaintiffs' auditor access to the  
19 wage and payroll books and records of Defendant ACS in order to permit the Plaintiffs  
20 to verify the precise amounts owed by the Defendants to the Trust Funds and Local 440.  
21 Said documents would include the following documents: payroll records, certified  
22 payroll records, time cards, payroll registers, form 1099's and 1096's, form W-2, W-3,  
23 DE-6 and 941 wage and tax statements, general ledger, accounts receivable listings, cash  
24 disbursement journals, job cost records, invoices, subcontracts, cash receipts journals,  
25 quarterly federal and state payroll tax returns, cancelled checks and check stub registers,  
26 inspector logs, shift differential logs, work orders, payroll records for related companies,  
27 employer contribution reports and cancelled checks regarding contributions owed/paid  
28 to other trust funds, detailed worker's compensation insurance reports, and any other



1 books and records that may be necessary to in order to determine the sums owed by the  
2 Defendants to the Plaintiffs.

3  
4 Dated: May 19, 2022

/s/ Jessica M. Alvarez  
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kfennelly@kraw.com  
vmindirgasova@kraw.com

Attorneys for Plaintiffs

# EXHIBIT 1

**LETTER OF ASSENT - A**

In signing this letter of assent, the undersigned firm does hereby authorize<sup>1</sup> SOUTHERN SIERRAS CHAPTER NECA  
as its collective bargaining representative for all matters contained in or pertaining to the current and any subsequent  
approved<sup>2</sup> INSIDE WIREMAN'S labor agreement between the

<sup>1</sup> SOUTHERN SIERRAS CHAPTER NECA and Local Union<sup>3</sup> 0440, IBEW.

In doing so, the undersigned firm agrees to comply with, and be bound by, all of the provisions contained in said current and subsequent  
approved labor agreements. This authorization, in compliance with the current approved labor agreement, shall become effective  
on the<sup>4</sup> 6TH day of MARCH, 2019.

It shall remain in effect until terminated by the undersigned employer giving written notice to the

<sup>1</sup> SOUTHERN SIERRAS CHAPTER NECA and to the Local Union at least one hundred fifty (150)  
days prior to the then current anniversary date of the applicable approved labor agreement.

The Employer agrees that if a majority of its employees authorize the Local Union to represent them in collective  
bargaining, the Employer will recognize the Local Union as the NLRA Section 9(a) collective bargaining agent for all  
employees performing electrical construction work within the jurisdiction of the Local Union on all present and future jobsites.

In accordance with Orders issued by the United States District Court for the District of Maryland on October 10, 1980,  
in Civil Action HM-77-1302, if the undersigned employer is not a member of the National Electrical Contractors Association, this letter of  
assent shall not bind the parties to any provision in the above-mentioned agreement requiring payment into the National Electrical Industry  
Fund, unless the above Orders of Court shall be stayed, reversed on appeal, or otherwise nullified.

SUBJECT TO THE APPROVAL OF THE INTERNATIONAL PRESIDENT, IBEW

ACS ENGINEERING INC. dba ACS ELECTRICAL #962264

<sup>5</sup> Name of Firm

33 HAMMOND, SUITE #209 P: 949.297.3777

Street Address/P.O. Box Number

IRVINE, CA 92618 F: 949.215.1117

City, State (Abbr.) Zip Code

<sup>6</sup> Federal Employer Identification No. 45-2256570

SIGNED FOR THE EMPLOYER

BY: [Signature]

(original signature)

NAME: Babak Kavooosi

TITLE/DATE RMO/CEO/President

SIGNED FOR THE UNION<sup>3</sup> 0440, IBEW

BY: [Signature]

(original signature)

NAME: Roger Roper

TITLE/DATE Business Manager

INSTRUCTIONS (All items must be completed in order for assent to be processed)

<sup>1</sup> NAME OF CHAPTER OR ASSOCIATION

Insert full name of NECA Chapter or Contractors Association involved.

<sup>2</sup> TYPE OF AGREEMENT

Insert type of agreement. Example: Inside, Outside Utility, Outside  
Commercial, Outside Telephone, Residential, Motor Shop, Sign, Tree  
Trimming, etc. The Local Union must obtain a separate assent to each  
agreement the employer is assenting to.

<sup>3</sup> LOCAL UNION

Insert Local Union Number.

<sup>4</sup> EFFECTIVE DATE

Insert date that the assent for this employer becomes effective. Do not  
use agreement date unless that is to be the effective date of this Assent.

<sup>5</sup> EMPLOYER'S NAME & ADDRESS

Print or type Company name & address.

<sup>6</sup> FEDERAL EMPLOYER IDENTIFICATION NO.

Insert the identification number which must appear on all forms filed  
by the employer with the Internal Revenue Service.

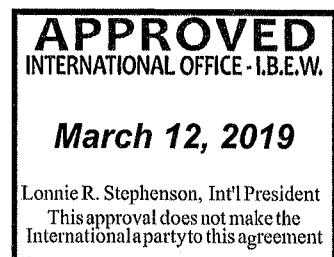
<sup>7</sup> SIGNATURES

<sup>8</sup> SIGNER'S NAME

Print or type the name of the person signing the Letter of Assent.  
International Office copy must contain actual signatures-not repro-  
duced-of a Company representative as well as a Local Union officer.

A MINIMUM OF FIVE COPIES OF THE JOINT SIGNED ASSENTS MUST BE SENT TO THE INTERNATIONAL OFFICE FOR PROCESSING.  
AFTER APPROVAL, THE INTERNATIONAL OFFICE WILL RETAIN ONE COPY FOR OUR FILES, FORWARD ONE COPY TO THE IBEW  
DISTRICT VICE PRESIDENT AND RETURN THREE COPIES TO THE LOCAL UNION OFFICE. THE LOCAL UNION SHALL RETAIN ONE  
COPY FOR THEIR FILES AND PROVIDE ONE COPY TO THE SIGNATORY EMPLOYER AND ONE COPY TO THE LOCAL NECA CHAPTER.

IBEW FORM 302 REV. 9/01



MAR 12 2019  
MAR 12 2019

# EXHIBIT 2

### SETTLEMENT AGREEMENT

This Settlement Agreement ("Settlement Agreement"), entered into as of February 1, 2022, by and among the Trustees of the Inland Empire IBEW-NECA Defined Contribution Trust Fund, the Trustees of the Riverside County Educational and Training Trust Fund, the Trustees of the Inland Empire IBEW-NECA Labor-Management Cooperation Committee Trust, the Southern Sierras Chapter of NECA on behalf of the Administrative Maintenance Fund, and the IBEW Local Union 440 (collectively, the "Trustees") on one hand; and ACS Engineering, Inc., a California corporation ("ACS") and Babak Kavoossi, an individual, on the other hand; is made with reference to the following facts:

### RECITALS

A. The Trustees are trustees of certain trusts ("Trusts"). ACS is signatory to the Inside Wiremen's Agreement between Local 440 of the IBEW and Southern Sierras Chapter of NECA ("Local 440 IWA"). The Local 440 IWA incorporates by reference the trust agreements establishing each of the Trusts ("Trust Agreements"). ACS is bound by the terms of the Local 440 IWA and the Trust Agreements. The Local 440 IWA and Trust Agreements obligate ACS to pay fringe benefit contributions to the Trustees based on the hours worked and wages paid to its employees who perform work covered by the Local 440 IWA.

B. With regard to the Local 440 IWA, this Settlement Agreement does not relate to the fringe benefit contributions owed to the Southern California IBEW-NECA Pension Plan, the Family Medical Care Plan, or the National Electrical Benefit Fund (plus associated interest, liquidated damages, attorneys' fees and costs). Those fringe benefit contributions and other amounts that may be due by ACS under the Local 440 IWA to those other entities are collected by other parties, and this Settlement Agreement does not address or resolve those other such delinquencies.

C. Pursuant to the Local 440 IWA, Trust Agreements, and 29 U.S.C. §§ 1132 and 1145, ACS is currently liable to the Trustees for a sum greater than \$42,652.83, including \$38,642.86 for fringe benefit contributions based on Monthly Reports submitted by ACS to the Trustees for the work months of June 2021 through October 2021, plus \$2,688.98 for liquidated damages and \$1,340.99 for accrued interest based on Monthly Reports submitted by ACS to the Trustees for the work months of April 2021 through October 2021.

D. This Settlement Agreement is being entered into by ACS and Mr. Kavoossi in exchange for the Trustees' agreement to forestall further legal proceedings to collect the amounts owed by ACS for the work months of April 2021 through October 2021.

E. The Trustees have not audited the records of ACS to verify the accuracy of any Monthly Reports submitted by ACS to the Trustees.

F. Pursuant to this Settlement Agreement, the Trustees, ACS, and Mr. Kavosski wish to resolve all disputes between them related to the Monthly Reports submitted to the Trusts for the work months of April 2021 through October 2021.

AGREEMENT

NOW, THEREFORE, in consideration of the mutual covenants contained herein, the Trustees, ACS, and Mr. Kavosski each agree as follows:

1. Each Recital stated in Paragraphs A through F is true and correct, and is incorporated herein through this reference.

2. ACS and Mr. Kavosski, jointly and severally, shall pay to the Trustees the sum of \$42,652.83 (the "Principal"), plus amortized interest thereon at the rate of eight percent (8%) per annum accruing from February 1, 2022, by paying the Trustees at least \$3,710.30 on or before February 1, 2022, and a like amount on the 1<sup>st</sup> day of each month thereafter until the Principal plus all accrued interest is paid in full. Time is of the essence under this Settlement Agreement. All payments shall be made by check payable to "Inland Empire IBEW-NECA funds" and remitted so that they are received by the due date to:

Kraw Law Group, APC  
Attn: Kerry Fennelly  
1017 East Grand Avenue  
Escondido, CA 92025

In order to be considered paid, the checks must be honored by the bank upon which they are drawn. All amounts received by the Trustees pursuant to this paragraph shall first be applied to accrued interest, and then to principal. The crediting and apportionment of all amounts paid pursuant to this paragraph shall be at the sole and absolute discretion of the Trustees. The Trustees represent that such crediting and apportionment will be consistent with federal laws, regulations and rules. ACS and Mr. Kavosski have the right to make prepayments without penalty, and interest shall accrue only on the balance still owing. Notwithstanding anything to the contrary herein or any prepayment, ACS and Mr. Kavosski, jointly and severally, shall be obligated to pay the Trustees at least \$3,710.30 on or before February 1, 2022, and a like amount on or before the 1<sup>st</sup> day of each month thereafter until all Principal and interest owed under this Settlement Agreement are paid in full.

3. ACS shall timely submit to the Trustees its monthly reports for the work month of November 2021 forward, and timely pay to the Trustees fringe benefit contributions and related amounts accruing, including liquidated damages and interest, pursuant to the Local 440 IWA and any successor collective bargaining agreements, ERISA, or statute by which ACS is bound. ACS also agrees to pay any amounts found to be due pursuant an audit conducted by or completed after the date of this Settlement Agreement.

4. Upon request, ACS shall submit to the Trustees any and all Certified Payroll Records for the work performed by ACS on all public works projects from April 1, 2021, forward; and by the 1<sup>st</sup> day of each month thereafter, ACS shall submit to the Trustees Certified Payroll Records for the work performed by ACS on public works projects for each preceding month, until all amounts due under paragraphs 2 and 3 above are paid in full.

5. If ACS and/or Mr. Kavossii fail to satisfy any condition set forth in paragraphs 2, 3, or 4 above, the Trustees shall send written notice by U.S. Mail and Email to Babak Kavossii (bobk@acsengineering.net), 33 Hammond, Suite 209, Irvine, CA 92618. If ACS and Mr. Kavossii fail to comply with any conditions set forth in paragraphs 2, 3, or 4, above within seven (7) calendar days of the mailing and emailing of said notice, ACS shall be in default ("Default") under this Settlement Agreement, and the principal amount of \$42,652.83 plus amortized interest thereon at the rate of eight percent (8%) per annum accruing from February 1, 2022, less all payments received by the Trustees pursuant to paragraph 2 above, shall become immediately due and owing to the Trustees, and the Trustees shall have the immediate right to take any and all legal actions to collect the amounts due including, but not limited to, filing a lawsuit against ACS and/or Mr. Kavossii in the U.S. District Court, and other court of appropriate jurisdiction, to collect all amounts owed under this Settlement Agreement, the Local 440 IWA, the Trust Agreements, and/or ERISA, 29 U.S.C. § 1001 et seq., including all attorneys' fees and costs.

6. Upon completion of all payments and acts required in paragraphs 2, 3, and 4 above, and provided ACS and Mr. Kavossii are not in Default as defined in paragraph 5 above, the Trustees release, acquit and forever discharge ACS and Mr. Kavossii from all claims, actions, causes of action, rights, or demands for fringe benefit contributions, liquidated damages, interest, attorneys' fees, and court costs based on the Monthly Reports submitted by ACS to the Trustees for the months of April 2021 through October 2021. With regard to the Local 440 IWA, this release does not relate to any fringe benefit contributions that may be owed to the Southern California IBEW-NECA Pension Plan, the Family Medical Care Plan, or the National Electrical Benefit Fund (plus associated interest, liquidated damages, attorneys' fees and costs).

7. It is understood and agreed by ACS and Mr. Kavossii that the Trustees have not audited ACS for recent time periods, and that this Settlement Agreement shall not be used to preclude the Trustees from collecting amounts owed by ACS based on hours not reported to the Trustees on the Monthly Reports for the months of April 2021 through October 2021.

8. In the event of any legal action or other legal proceeding concerning any term or condition contained herein or the enforcement of any provision herein, the prevailing party shall be entitled to its reasonable attorneys' fees, court costs and expenses. The term "prevailing party" shall be that as defined in California Code of Civil Procedure § 1032.



9. This Settlement Agreement shall not be construed against the party preparing it, but shall be construed as if the parties hereto jointly prepared this Settlement Agreement, and any uncertainty and ambiguity shall not be interpreted against any one party.

10. This Settlement Agreement is intended by the parties hereto as a final expression of their agreement and is intended to be a complete and exclusive statement of the agreement and understanding of the parties hereto with respect to the subject matters contained herein. This Settlement Agreement supersedes any and all prior agreements, promises, representations, warranties, agreements, understandings, and undertakings among the Trustees, ACS, and Mr. Kavooosi, with respect to such subject matters and there are no other or further promises, representations, warranties, agreements, understandings, or undertakings. If any provision of this Settlement Agreement, or the application thereof, shall for any reason or to any extent be construed by a court of competent jurisdiction to be invalid or unenforceable, the remainder of this Settlement Agreement, and application of such provisions to other circumstances, shall remain in effect and be interpreted so as to reasonably effect the intent of ACS, Mr. Kavooosi, and the Trustees.

11. This Settlement Agreement shall be binding on the successors or assigns of the Trustees, ACS, and Mr. Kavooosi. ACS and Mr. Kavooosi, and the Trustees represent that the person executing this Settlement Agreement on its behalf is legally competent and is authorized to enter into this Settlement Agreement and to bind said party to the representations, terms and conditions set forth herein.

12. This Settlement Agreement may be signed in counterparts. Signatures delivered via facsimile and e-mail transmission shall have the same force and effect as the originals.

ACS ENGINEERING, INC., a California corporation

Dated: 2/3/22

By:   
Babak Kavoossi, President/Chief Executive Officer


BABAK KAVOOSI, an individual

Dated: 2/3/22

By:   
Babak Kavoossi, individually

TRUSTEES OF THE INLAND EMPIRE IBEW-NECA DEFINED CONTRIBUTION TRUST FUND, THE TRUSTEES OF THE RIVERSIDE COUNTY EDUCATIONAL AND TRAINING TRUST FUND, THE TRUSTEES OF THE INLAND EMPIRE IBEW-NECA LABOR-MANAGEMENT COOPERATION COMMITTEE TRUST, THE SOUTHERN SIERRAS CHAPTER OF NECA ON BEHALF OF THE ADMINISTRATIVE MAINTENANCE FUND, AND THE IBEW LOCAL UNION 440

Dated: 02/03/2022

By:   
Name: Tavia Brunner  
Title: Joint Collection Committee Trustee

Dated: 2/3/22

By:   
Name: Jason Eshelman  
Title: Joint Collection Committee Trustee

Dated: 2/7/22

By:   
Name: James Rush  
Title: Joint Collection Committee Trustee

